

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELNA BERRY, BART BERRY, GWINT L.  
FISHER, RENEE FISHER, IRIS RUIZ, GARET  
CUNNINGHAM, ROSALBA RUIZ,  
SUZANNAH ANDERSON, CADEN  
ASHKAR, KENDRA FROME, JACOB  
FROME, HAZEL FROME, AND OLIVIA  
FROME, individually and on behalf of all  
others similarly situated, and DOES 1-327.

No. 2:24-cv-134

## NOTICE OF REMOVAL

Plaintiffs,

V.

THE BOEING COMPANY, a Delaware profit corporation; and ALASKA AIRLINES, INC., an Alaska corporation,

## Defendants.

TO: The Clerk, United States District Court  
for the Western District of Washington at Seattle

Defendant The Boeing Company (“Boeing”) hereby removes this civil case from King County Superior Court to the United States District Court for the Western District of Washington under 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453. This Court has original jurisdiction, and removal is proper under 28 U.S.C. § 1441(a), because in the putative class action (1) the aggregate number of members in the proposed class is 100 or more; (2) the matter in controversy “exceeds

1 the sum or value of \$5,000,000, exclusive of interest and costs”; and (3) the parties are minimally  
 2 diverse—that is, “any member of a class of plaintiffs is a citizen of a State different from any  
 3 defendant.” *Id.* § 1332(d)(2)(A). As a short and plain statement of the grounds for removal, Boeing  
 4 states the following.

## 5 **I. INTRODUCTION AND BACKGROUND**

6 This lawsuit arises from an incident on a Boeing 737-9 airplane operated by Alaska  
 7 Airlines as Flight 1282 on January 5, 2024. Plaintiffs filed their state court complaint on  
 8 January 11, 2024, in King County Superior Court as Case No. 24-2-00824-1 KNT, naming Boeing  
 9 as the sole defendant. On January 16, 2024, prior to Boeing answering, Plaintiffs filed their First  
 10 Amended Complaint, adding Alaska Airlines as a defendant. A true and correct copy of Plaintiffs’  
 11 First Amended Complaint is attached as **Exhibit A**. Plaintiffs allege to have been passengers on  
 12 Flight 1282 and one spouse of a passenger. Ex. A, First Amend. Compl. ¶¶ 4.1–4.13. Plaintiffs  
 13 assert claims under the Washington Product Liability Act (RCW 7.72 *et seq.*) against Boeing, *id.*  
 14 ¶¶ 8.1–8.3, and breach of common carrier’s duty against Alaska Airlines, *id.* ¶¶ 8.4–8.16. They  
 15 also seek class relief on behalf of all passengers on board Flight 1282 on January 5, 2024, and their  
 16 spouses and registered domestic partners. *Id.* ¶¶ 8.17–8.26.

## 17 **II. GROUNDS FOR REMOVAL**

18 A civil action brought in state court is removable if the district court has original  
 19 jurisdiction over it. 28 U.S.C. § 1441(a). As set forth below, this Court has jurisdiction based on  
 20 the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), rendering the action  
 21 removable.

### 22 **A. This Court has jurisdiction under CAFA.**

23 This case is removable under 28 U.S.C. § 1441(a) because this Court has original  
 24 jurisdiction under CAFA, which gives federal district courts original jurisdiction over any putative  
 25 class action in which (1) the aggregate number of members in the proposed class is 100 or more;  
 26 (2) the matter in controversy “exceeds the sum or value of \$5,000,000, exclusive of interest and

1 costs”; and (3) the parties are minimally diverse—that is, “any member of a class of plaintiffs is a  
 2 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2), (5). Because all those  
 3 requirements are met, and because Boeing has met all other applicable requirements, the case is  
 4 removable under CAFA.

5 CAFA defines “class action” as “any civil action filed under rule 23 of the Federal Rules  
 6 of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be  
 7 brought by 1 or more representative persons as a class action.” *Id.* § 1332(d)(1)(B). Plaintiffs filed  
 8 this case seeking “Class Relief” under Washington Superior Court Civil Rule 23 (“Civil Rule 23”).  
 9 *See* Ex. A, First Amend. Compl. ¶¶ 8.17–8.26. Civil Rule 23 states that “[o]ne or more members  
 10 of a class may sue . . . as representative parties on behalf of all only if (1) the class is so numerous  
 11 that joinder of all members is impracticable, (2) there are questions of law or fact common to the  
 12 class, (3) the claims or defenses of the representative parties are typical of the claims or defenses  
 13 of the class, and (4) the representative parties will fairly and adequately protect the interests of the  
 14 class.” Wash. Super. Ct. Civ. R. 23(a). The requirements for class certification under Civil Rule  
 15 23 parallel those of Federal Rule of Civil Procedure 23. *Compare* Wash. Super. Ct. Civ. R. 23 with  
 16 Fed. R. Civ. P. 23. Thus, the amended complaint alleges a “class action” as defined by CAFA and,  
 17 as described below, meets CAFA’s other requirements as well.

18                   **1.       The alleged class contains more than 100 members**

19 Plaintiffs propose a class on behalf of “All passengers aboard Alaska Airlines Flight 1282  
 20 on January 5, 2024 who were not at that time on-duty employees of the Defendant, and their  
 21 spouses and registered domestic partners.” Ex. A, First Amend. Compl. ¶ 8.18. They further allege  
 22 that the putative class includes “approximately 171 individual passengers and their spouses and  
 23 registered domestic partners[.]” *Id.* ¶ 8.21. Accordingly, while Boeing does not concede that  
 24 Plaintiffs’ proposed class is certifiable, lawful, or otherwise proper, and while Boeing expressly  
 25 reserves the right to raise all arguments and defenses to Plaintiffs’ allegations, including the class  
 26

1 certification allegations, the alleged class includes *at least* 171 members for purposes of removal,  
 2 exceeding CAFA's 100-member requirement.

3 **2. The amount in controversy exceeds \$5,000,000**

4 CAFA requires courts to aggregate the claims of putative class members "to determine  
 5 whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
 6 and costs." 28 U.S.C. § 1332(d)(6). Thus, a court must "determine whether it has jurisdiction by  
 7 adding up the value of the claim of each person who falls within the definition of [Plaintiffs']  
 8 proposed class and determine whether the resulting sum exceeds \$5 million." *Standard Fire Ins.*  
 9 *Co. v. Knowles*, 568 U.S. 588, 592 (2013).

10 Plaintiffs do not allege a specific amount in controversy. When, as here, plaintiffs fail to  
 11 allege a specific amount in controversy, a defendant need only make a plausible estimate. *See Dart*  
 12 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) ("[A] defendant's notice  
 13 of removal need include only a plausible allegation that the amount in controversy exceeds the  
 14 jurisdictional threshold."). Boeing alleges, based on the available information, that the amount in  
 15 controversy exceeds CAFA's \$5,000,000 threshold.

16 Plaintiffs allege that they suffered injuries such as "a concussion and soft tissue injuries to  
 17 her neck and back," "lost hearing," "emotional distress, including but not limited to some or all of  
 18 the following: terror, fear of death or serious injury, worry, anxiety, reaction to sudden noises,  
 19 flashbacks of the incident and reluctance to fly," and "physical manifestations borne from the  
 20 emotional distress that occurred." *See* Ex. A, First Amend. Compl. ¶¶ 7.1–7.4. They also seek  
 21 "other special and general damages" and damages for "evaluation and/or treatment of health  
 22 conditions and associated travel expenses, ticket fees, costs associated with cancelation of travel  
 23 plans, the value of lost personal items, lost wages and other economic opportunities damages,  
 24 psychological injury, lost enjoyment of life, lost travel and economic opportunities, inconvenience,  
 25 lost personal experiences, and loss of consortium." *Id.* ¶ 7.4.

1 Plaintiffs allege that the putative class includes *at least* 171 individuals. If each class  
 2 member's damages were \$29,240 or more, the aggregate matter in controversy of the proposed  
 3 class of 171 or more would exceed \$5,000,000. Based on its experience in cases involving similar  
 4 claims, Boeing alleges, while reserving the right to dispute, that the damages sought by each class  
 5 member exceed that amount. Moreover, this sum is for the passengers on Flight 1282 alone, and  
 6 does not include the claims of the spouses and registered domestic partners that Plaintiffs also  
 7 allege are part of the putative class. Thus, the aggregate amount in controversy plausibly exceeds  
 8 CAFA's \$5,000,000 threshold.

9 **3. The parties are minimally diverse**

10 The parties are minimally diverse, which requires only that "any member of [the class] of  
 11 plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). The  
 12 named plaintiffs are citizens of Washington, California, Oregon, and Florida. *See* Ex. A, First  
 13 Amend. Compl. ¶¶ 4.1–4.13. Defendant Alaska Airlines is an Alaska corporation with its  
 14 headquarters in Washington. *Id.* ¶ 4.15 Boeing is a Delaware corporation with its principal place  
 15 of business in Arlington, Virginia. *See id.* ¶ 4.14. Thus, for removal purposes, Boeing is a citizen  
 16 of Delaware and Virginia, and Alaska Airlines is a citizen of Alaska and Washington. *See* 28  
 17 U.S.C. § 1332(c)(1). There is thus minimal diversity under CAFA because at least one member of  
 18 the class is diverse from Boeing and/or Alaska Airlines.

19 **B. Boeing has satisfied the other requirements for removal.**

20 This case is removable to this Court under 28 U.S.C. § 1441 because this Court would have  
 21 had original jurisdiction over Plaintiffs' claims had they elected to file their case initially in federal  
 22 court. This Court is the United States District Court for the district and division embracing the  
 23 place where the case is pending—King County, Washington—and is therefore the appropriate  
 24 venue for removal pursuant to 28 U.S.C. § 1441(a).

25 By service upon it on January 12, 2024, Boeing first received a copy of the Summons and  
 26 Complaint in the state-court action. Plaintiffs filed a First Amended Complaint on January 16,

1 2024. This notice is filed within thirty (30) days of Boeing's receipt of the initial pleading as  
 2 required by 28 U.S.C. §§ 1446(b)(1), (2)(B).

3 Under CAFA, the consent of all defendants to remove an action is not required. 28 U.S.C.  
 4 § 1453(b); *see also Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1181 (9th Cir. 2015)  
 5 ("section 1453 permit[s] a single defendant to remove without the consent of other defendants");  
 6 *Preston v. Tenet Healthsystems Memorial Medical Center, Inc.*, 485 F.3d 804, 814 (5th Cir. 2007)  
 7 ("Congress eliminated the requirements for complete diversity and unanimous consent among the  
 8 defendants to effectuate removal, such changes are clear from the plain language of the statute.");  
 9 *Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1196 (11th Cir. 2007) (same). Nevertheless, Alaska  
 10 Airlines consents to Boeing's removal of this action.

11 Attached to this Notice as Exhibit A is a true copy of the First Amended Complaint which  
 12 Plaintiffs have filed in this case.<sup>1</sup> All other process, pleadings, or orders filed in this case will be  
 13 filed, together with the verification of Boeing's counsel, within 14 days of the filing of this notice  
 14 of removal, as required by the Local Rules of this Court.

15 Boeing is today serving this Notice of Removal on Plaintiffs and will promptly file a copy  
 16 of this Notice with the Clerk for King County Superior Court in accordance with 28 U.S.C.  
 17 § 1446(d).

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26 <sup>1</sup> Also attached to this notice is Exhibit B, Plaintiffs' Second Praeclipe, correcting the caption to their First  
 Amended Complaint.

1 Dated: February 1, 2024

2 /s/ Christopher M. Ledford

3 /s/ Mack H. Shultz

4 Mack H. Shultz, WSBA No. 27190

5 Christopher M. Ledford, WSBA No. 44515

6 **Perkins Coie LLP**

7 1201 Third Avenue, Suite 4900

8 Seattle, Washington 98101-3099

9 Telephone: 206.359.8000

10 Facsimile: 206.359.9000

11 MShultz@perkinscoie.com

12 CLedford@perkinscoie.com

13 *Attorneys for Defendant The Boeing Company*

## **CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on February 1, 2024, I caused the following to be served the foregoing NOTICE OF REMOVAL by the method(s) indicated:

Daniel R. Laurence  
Brad Moore  
Melanie Nguyen  
Furhad Sultani  
STRITMATTER KESSLER KOEHLER  
MOORE  
3600 15th Avenue W., Suite 300  
Seattle, WA 98119  
[dan@stritmatter.com](mailto:dan@stritmatter.com)  
[brad@stritmatter.com](mailto:brad@stritmatter.com)  
[melanie@stritmatter.com](mailto:melanie@stritmatter.com)  
[furhad@stritmatter.com](mailto:furhad@stritmatter.com)

- Via hand delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via Email
- Other: \_\_\_\_\_

*Attorneys for Plaintiffs*

Caryn Geraghty Jorgensen  
Robert L. Bowman  
McKenzi A. Hoover  
STOKES LAWRENCE, P.S.  
1420 Fifth Avenue, Suite 3000  
Seattle, WA 98101-2393  
[caryn.jorgensen@stokeslaw.com](mailto:caryn.jorgensen@stokeslaw.com)  
[robert.bowman@stokeslaw.com](mailto:robert.bowman@stokeslaw.com)  
[mckenzi.hoover@stokeslaw.com](mailto:mckenzi.hoover@stokeslaw.com)

- Via hand delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Facsimile
- Via Email
- Other: \_\_\_\_\_

*Attorneys for Defendant Alaska Airlines, Inc.*

DATED this 1st day of February, 2024.

s/Christopher M. Ledford  
Christopher M. Ledford

## CERTIFICATE OF SERVICE – 1